

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-13-1-5-00167-16
45-003-16-1-5-00519-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-18-427-003.000-003
Assessment Years: 2013 and 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. James Nowacki contested his 2013 and 2016 assessments for 3319 W. 25th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant residential lot at \$5,000 for 2013 and \$4,600 for 2016.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On October 29, 2018, Ellen Yuhan, our designated administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by his hearing officer, Robert W. Metz. Both were sworn in and testified.

Record

4. The official record for this matter contains the following:
 - a. Petitioner Exhibit 1: GIS Map
Petitioner Exhibit 2: 2008-2013 property record card
Petitioner Exhibit 3: 2014-2018 property record card
 - b. The record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

Burden of Proof

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b), (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
6. Because the assessment did not change between 2012 and 2013 and actually decreased between 2015 and 2016, Nowacki has the burden of proof.

Summary of Contentions

7. Nowacki's case:
 - a. Nowacki contends the assessment should be \$2,800 for both years. In 2009, he bought the property at an auction attended by hundreds of potential bidders. The sale price of \$183 shows that the property was assessed for significantly more than it was worth. *Nowacki testimony; Pet'r Exs. 1-2.*
 - b. The county had the property for seven years, which demonstrates that it has no value. According to Nowacki, high assessments destroy real estate markets. He believes that in Gary's declining market, assessments are higher than market value because the Assessor's office takes far too long to recognize the decline and assess properties accordingly. *Nowacki testimony; Pet'r Exs. 1-2.*
8. The Assessor's case:
 - a. The Assessor contends Nowacki offered no substantial evidence to support changing the 2013 and 2016 assessments. *Metz argument.*

ANALYSIS

9. Nowacki failed to make a prima facie case for reducing the subject property's 2013 or 2016 assessments. We reach this conclusion for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use

of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.

- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 and 2016, the valuation dates were March 1, 2013 and January 1, 2016, respectively. I.C. § 6-1.1-2-1.5(a).
- c. Nowacki contends the subject property should be assessed at \$2,800 for both years under appeal. But he failed to present any probative market-based evidence to support that value, or any other value for that matter. Conclusory statements are insufficient. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. To the extent that Nowacki contends that his purchase of the property at auction in 2009 established its market value, we disagree. A property’s sale price can be compelling evidence of its value. But Nowacki offered no evidence to show that the auction met the indicia of a market-value transaction. And he did not even attempt to explain how the sale price related to the property’s value as of the relevant valuation dates several years later.
- e. Because Nowacki offered no probative market-based evidence to demonstrate the property’s correct market value-in-use, he failed to make a prima facie case for lowering his assessments. Where a petitioner has not supported his claim with probative evidence, the respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property’s 2013 and 2016 assessments.

ISSUED: March 21, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.